

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4163

IN THE MATTER OF:

Served September 13, 1993

Application to Transfer Certificate)  
of Authority No. 186 from BOSTON )  
COACH-WASHINGTON CORP., a )  
Massachusetts Corporation, to )  
BOSTON COACH-WASHINGTON CORP., a )  
Virginia Corporation )

Case No. AP-93-21

By application filed July 21, 1993, Boston Coach-Washington Corp., trading as Boston Coach, a Virginia corporation (Boston Coach-VA or transferee) seeks Commission approval of its merger with Boston Coach-Washington Corp., trading as Boston Coach, a Massachusetts corporation (Boston Coach-MA or transferor) (collectively Boston Coach), with the former surviving to transport passengers between points in the Washington Metropolitan District in accordance with Certificate No. 186.

Notice of this application was served on July 27, 1993, in Order No. 4143, and Boston Coach-VA was directed to publish further notice in a newspaper and file an affidavit of publication. Boston Coach-VA complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, transferee's corporate status, facilities, proposed tariff, finances, and regulatory compliance record. Also included are the agreement and plan of merger and the articles of merger.

Pursuant to the agreement and plan of merger, Boston Coach-MA was merged with and into Boston Coach-Virginia Corp., a newly created corporation, which simultaneously changed its name to Boston Coach-Washington Corp. and which will continue the operations previously conducted by Boston Coach-MA. All of Boston Coach-MA's property, rights, privileges, licenses and "other assets of every kind" were "transferred to and vested in" Boston Coach-VA. Transferee will operate the same vehicles under the same tariff.

FTM Corp., which controls various other carriers operating outside of the Metropolitan District, was the sole shareholder of the merging entities and is the sole shareholder of the surviving entity. According to Boston Coach-VA, there has been no change in management control. As a Virginia corporation, the surviving entity is able to

apply for intra-Virginia passenger carrier authority.<sup>1</sup> The merger has been approved by the Commonwealth of Virginia State Corporation Commission.

Boston Coach-VA's controller certifies on its behalf that applicant has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

Boston Coach-VA filed an income statement for the twelve months ended December 31, 1992, showing WMATC operating income of \$111,710; other operating income of \$1,196,883; total operating expenses of \$1,824,686; loss on disposition of fixed assets of \$6,000; and a net loss of \$522,093.

Boston Coach-VA has moved for waiver of filing requirements for the following documents: (1) a balance sheet, (2) a pro-forma statement of income and expenses, (3) a copy of a fully executed transfer agreement, and (4) a certificate of good standing for transferee.

#### DISCUSSION AND CONCLUSION

Under Title II of the Compact, Article XI, Section 11(a), and Article XII, Section 3, the Commission may approve the merger of Boston Coach-MA with Boston Coach-VA and consequent transfer of Certificate No. 186 if the Commission finds said merger and transfer to be in the public interest.

Prior to amendment of the Compact in 1991, the public interest analysis would have focused on the transferee's fitness, the fairness of the purchase price, the resulting competitive balance, the dormancy of operating rights, the benefits to the riding public, and the interest of affected employees.<sup>2</sup> The dormancy inquiry was a means of guarding against the transfer of operating rights which had fallen into such disuse as to no longer serve a public need.<sup>3</sup> The purchase price inquiry was necessary to prevent the transferee from passing

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<sup>1</sup> See Va. Const. art. IX, § 5 (prohibiting foreign corporations from doing business in Va. as public service enterprises); Va. Code Ann. § 56-1 (Michie 1986) (public service corporation includes common passenger carrier).

<sup>2</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031 (public interest in mergers under Compact deemed to include interest of affected employees); In re Air Couriers Int'l Ground Transp. Servs., Inc. t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express, No. AP-92-12, Order No. 3956 (June 15, 1992); In re The Airport Connection, Inc., & Airport Baggage Carriers, Inc., No. AP-88-27, Order No. 3302 (Mar. 13, 1989); In re American Coach Lines, Inc., No. AP-87-20, Order No. 3094 (Nov. 18, 1987); In re Highview Bus Serv., Inc., & Courtesy Bus Rental Sys., Inc., No. AP-78-47, Order No. 1988 (Apr. 25, 1979).

<sup>3</sup> In re Lucille R. Moore, t/a Traveline Tours, & Sam H. Joseph, No. AP-89-34, Order No. 3476 (Mar. 22, 1990).

exorbitant acquisition costs on to captive customers in the form of rate increases.<sup>4</sup> Public necessity and ratemaking issues are no longer relevant concerns under the amended Compact.

Because Boston Coach-VA is identical to Boston Coach-MA in all material respects, our inquiry is at an end with regard to the competitive balance<sup>5</sup> and affected employee issues, and Boston Coach-VA is entitled to a presumption of fitness.<sup>6</sup> That presumption finds support in the record. While the income statement filed with the application exhibits a substantial one-year loss, the Commission's records show Boston Coach's operating ratio has improved from 2.81 in 1991 to 1.93 in 1992. Our records also reflect a firm commitment of financing from transferee's parent, FTM Corp.<sup>7</sup> Transferee's compliance fitness and operational fitness are not in question.

Based on the evidence in this record, the Commission finds Boston Coach-VA to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the merger and transfer of Certificate No. 186 are consistent with the public interest.

For administrative reasons, Certificate No. 186 shall be reissued. Because transferee's proposed tariff references the order and case numbers from the proceeding in which transferor was granted operating authority, transferee will be directed to file a new tariff.

For good cause shown, the motion for waiver of filing requirements is granted.

THEREFORE, IT IS ORDERED:

1. That the application of Boston Coach-Washington Corp., trading as Boston Coach, 2701 Dorr Avenue, Fairfax, VA 22032, for approval of merger and transfer of Certificate of Authority No. 186 is hereby conditionally granted, contingent upon timely compliance with the requirements of this order.

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<sup>4</sup> In re Nation's Capital Sightseeing Tours & Ernest Harrelson, No. AP-86-40, Order No. 2953 (Dec. 22, 1986).

<sup>5</sup> In re Vernoy Franklin & Franklin Charter Bus, Inc., No. AP-91-15, Order No. 3799 (Aug. 6, 1991).

<sup>6</sup> We found Boston Coach-MA fit in 1991. In re Boston Coach-Wash. Corp., t/a Boston Coach, No. AP-91-20, Order No. 3800 (Aug. 6, 1991). That finding is given res judicata effect here. In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, No. AP-91-45, Order No. 3915 (Mar. 25, 1992). The fitness of a looking-glass transferee takes on less importance, in any event. In re Thomas A. Pickens & P&T Transp. Co., No. AP-86-15, Order No. 2887 (July 23, 1986); In re John W. Brown & J&B Transp. Co., Inc., No. AP-85-28, Order No. 2782 (Nov. 4, 1985).

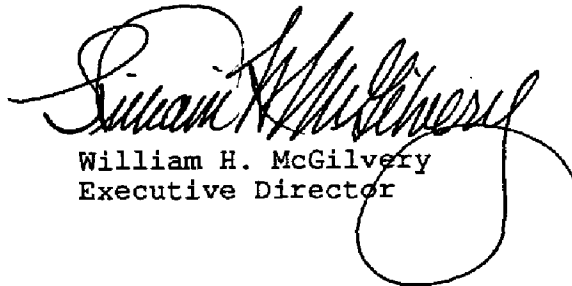
<sup>7</sup> Order No. 3801 at 3.

2. That Boston Coach-Washington Corp., trading as Boston Coach, is hereby directed to file four copies of a tariff or tariffs in accordance with Commission Regulation No. 55.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 186 shall be reissued to Boston Coach-Washington Corp., trading as Boston Coach.

4. That unless Boston Coach-Washington Corp., trading as Boston Coach, complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the application for approval of merger and transfer of Certificate of Authority No. 186 shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery  
Executive Director